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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,770	11/21/2001	Melody Vos	5253-04200	1825

29855 7590 11/22/2005

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EXAMINER

ABEL JALIL, NEVEEN

ART UNIT PAPER NUMBER

2165

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/990,770

Applicant(s)

VOS ET AL.

Examiner

Neveen Abel-Jalil

Art Unit

2165

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 02 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).  
13. ☒ Other: See Continuation Sheet.

Continuation of 11: Applicant's arguments filed on November 2, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that "the portions selectively picked from Agarwal et al. do not describe each of assignee's claimed limitation as arranged in the claims nor in a complete detail as contained in the claim" is acknowledged but not deemed to be persuasive. The Examiner respectfully contends that the cited portions are merely a representation of cited reference which should be considered in its entirety and due indeed read on the claimed invention.

In response to applicant's arguments, the recitation "automated database management" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hira*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). The Examiner only find one statement of "automated database management" in the preamble associated with Independent Claim 1. No such recitation is found in the body of that particular claim or any other Independent claim.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., automatically determining) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). There's no disclosure in the "determining" step as to having it take place other than manually.

In response to applicant's argument that "Agarwal et al.'s creator (i.e. administrator of a computer system) can elect to have only a single granularity of cost/selectivity functions, which are used to estimate the costs of execution plans which does not read on "determining actions to be performed" as claimed in claim 1" is acknowledged but not deemed to be persuasive.

The Examiner maintains that the cited portion of Agarwal et al. re-stated in the above argument is showing an action being taken (action = creating) taken on the database according to a relationship definition stored in the database. The Examiner maintains that "modifying the one or more database objects by performing the action on the database objects" is read on "having association table that registers object types having a cost function with particular objects in a database system" because it is clear to the Examiner that that modifying the association table (i.e. database) and "registration" of objects is part of the management function of the database system which is monitored, tracked, and maintained. The Examiner the cited reference must be taken as a whole with the help of small variant citations by the Examiner to interpret the claims. There are numerous sections that broadly read on the argued limitation.

The Examiner maintains that "optimizing responses to SQL statements" are indeed actions on the database... in Agarwal et al. the database records can be stored, retrieved, and modified using SQL statements and therefore use up resources in the system which must be optimized and managed regularly.

The Examiner contends that "policies" does indeed broadly read on "execution plans" which are both user defined and drive functionality. The claim language gives the optionally of claiming either "policies" or "definitions" and therefore leaves the Examiner open to interpret the claimed recitation.

6,944,630



Continuation of 13. Other: Terminal Disclaimer for co pending applications 09/991,561 & 11/058,775 have been entered and approved. The Examiner still maintains that double patenting is still effective with regards to Patent No. The Examiner find the steps of "collecting, determining, monitoring" in conjunction with "performing the actions" step found in claim 1 of VOS'630 patent is broader than instant application since the "performing the actions" step is now being defined as "policies or definition" which are disclosed in the instant application. The current application is broader, encompassing those steps.